

LEON ALFARA MIRANDA

IBLA 74-111

Decided March 11, 1974

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying a petition for reinstatement of oil and gas lease U-19069- Y.

Affirmed.

Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

It is proper to deny a request for reinstatement of an oil and gas lease terminated for failure to pay advance rental timely where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to lack of reasonable diligence.

APPEARANCES: Leon Alfara Miranda, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On August 6, 1973, the Utah State Office, Bureau of Land Management, received the annual rental payment from appellant Leon Alfara Miranda for oil and gas lease U-19069-Y. The envelope containing the payment was sent by air mail and postmarked August 3, 1973. Since the payment was received after the August 1, 1973, due date (anniversary date), the lease automatically terminated. Act of July 29, 1954, 68 Stat. 585, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. 188(b) (1970). Miranda filed a petition for reinstatement of the lease with the State Office, but did not give any reasons why his lease should be reinstated.

Although payment was made within 20 days of the anniversary date, the Utah State Office, in a decision dated August 30, 1973, rejected the petition for reinstatement because Miranda did not make a showing of reasonable diligence or justifiable failure

as required by the Act of May 12, 1970, 84 Stat. 206, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. 188(c) (1970). 1/

Pursuant to the Act of May, 12, 1970, an oil and gas lease which has terminated because of the lessee's failure to pay the annual rental on or before the anniversary date may be reinstated only if the rental is paid or tendered within 20 days of that date and it is found that the lessee's attempt to make the payment was reasonably diligent or his failure to pay the rental timely was justifiable. 30 U.S.C. § 188(c).

As Miranda gave no reasons to support his petition for reinstatement it was proper for the Bureau office to deny the petition. In his appeal he offers the following reasons for the late tender of rental:

The main reason for not having been able to comply with the regulation of payment on time of the annual rental was the state of illness which I suffered from July 14th to July 29, 1973. Even though I had instructed my secretary to mail the check on time, this was not mailed until July 31, 1973. My secretary was under the impression that it would be postmarked on that same date and that it would be perfectly all right, such as the checks mailed to the Internal Revenue Service. However, for some strange reason this envelope was not postmarked on that same date, according to your statement that the postmark was August 3, 1973.

For your information, this is the first time that I have made this type of investment and truthfully speaking, I was not aware that annual rentals should reach you on the due date or before. Even though I was sick, I took many precautions to comply with the regulations and I assure you that hereafter, I will see to it that the annual rentals will reach you quite on time, if you kindly reconsider my case and reinstate my lease.

There is some inconsistency in Miranda's statement. Although he asserts he instructed his secretary to mail the check on time, he indicates he was not aware the rentals should be received on the due date or before. This suggests the delay in paying the rental was due more to his ignorance of the requirements of the regulations as to timely receipt of the payment than to his illness.

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1/ Regulation 43 CFR 3108.2-2(c)(2) provides that the lessee has the burden of proof on these issues.

Appellant has not shown that reasonable diligence was exercised here, even if we assume his secretary mailed the letter on July 31, 1973, as he indicates, rather than on August 3, the date of the postmark. "Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal and delivery of the payment." 43 CFR 3108.2-2(c)(2). Miranda has offered no evidence that an air mail letter mailed from San Juan, Puerto Rico, on July 31, would arrive in Salt Lake City, Utah, by August 1, taking into account normal delays in collection and delivery.

Likewise we cannot find that the delay in payment was "justifiable" here. The failure to pay the rental on time is "justifiable" when there is a factor beyond the control of the lessee which is the cause of the late payment. Kenneth F. Santor, 13 IBLA 208, 210 (1973); Louis Samuel, 8 IBLA 268, 274 (1972). Illness is a factor beyond the control of a person, and where it is the cause of a late payment, the Department may reinstate a terminated lease. John Rusiniak, 10 IBLA 74, 75 (1973); R. G. Price, 8 IBLA 290, 291 (1972).

Appellant's statement does not show that illness caused the delay. As indicated, it appears that his unfamiliarity with the requirements for timely receipt of the payment was more a factor than his illness. Lack of knowledge of the regulations has not been considered a justifiable excuse. Louis Samuel, supra. In any event, there is a time gap between the last day of his illness, July 29, and the day he asserts his secretary mailed the check, July 31, for which there is no explanation of his failure to follow up on the payment. Further, even assuming he properly instructed the secretary to mail the rental check timely, her failure to do so is not a justifiable excuse. The failure of an employee to make payment on time has been held not to be a justifiable excuse. Monturah Co., 10 IBLA 347, 349 (1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joan B. Thompson  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Frederick Fishman  
Administrative Judge

